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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,544	02/19/2004	Joanne Kaye	486.0043USU	3243

7590 04/22/2005

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/782,544	KAYE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gloria Hale	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 and 36-40 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5-28-04</u> .   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Specification*

The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the **generic terminology, hook and loop fastener**.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 112*

Claim 2, line 4 recites the limitation ""the brassiere". There is insufficient antecedent basis for this limitation in the claim.

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the insert adhesive as claimed in claims 18 and 36 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 14-16, 18, 25-29,34,36,39 and 40 rejected under 35 U.S.C. 102(b) as being anticipated by Alfandre (US 2,861,276).

Alfandre discloses a brassiere with a cushioned fastener system secured as claimed and including a first portion 14, a second portion 16 and wherein one of the first or second portions has at least one insert(64). (See Alfandre, figures 1,2,5;col.2, line 1 – col. 3, line 42). The brassiere fastener cushion structure is releasably secured by fasteners 20,18 to one of the pair of side panels (the left side panel) as broadly claimed and is fixedly secured to the brassiere. The cushion structure is a pouch (64 within layers 62 and 24). The cushion pouch has a first body (62) contacting layer and a

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second layer (24). The first and second layers have the first and second free ends, are mutually connectable and are fixedly connected by stitching. The insert is adhesively connected to the pouch as broadly claimed in that the insert 64 is sealed within the pouch by the heat welding of the plastic binding which when heated becomes an adhesive about the perimeter. The direct adhesion of the insert surface has not been claimed. (See Alfandre, col. 2, line 1 – col. 3, line 42).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-22 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre (US 2,861,276) in view of Deal et al (US 6,231,423).

Alfandre discloses the invention substantially as claimed. However, Alfandre does not specifically disclose the padding 64 as being a silicone gel material padding. It is well known that silicone-padding material is widely used in garments as protective and body enhancing padding to cushion areas of the garment in addition to shoulder strap areas. Deal discloses silicone padding within film layers (43,44) to encase the loose gel material and with a border that is heat sealed (46). (See Deal et al (col 4, lines 6-22). Such heat sealed film enclosures with silicone gel therein are well known padding structures used in garment construction wherein the film and heat sealed lip edges

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enclose the gel therein to prevent gel leakage. (See Deal et al, col. 3, line 50 – col. 4, line 37).

Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre (US 2,861,276).

Alfandre discloses the invention substantially as claimed. However, Alfandre does not specifically disclose the specific brassiere fabrics as broadly claimed. The claimed fabrics are well known in brassiere construction. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the brassiere components of the selected materials in order to achieve a desired aesthetic effect in addition to gaining the benefits and performance characteristics of the selected materials as desired. Such a selection has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin , 125 USPQ 416.

Claims 23 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre in view of Greenberg(US 5,395,280).

Alfandre discloses the invention substantially as claimed. However, Alfandre does not specifically disclose the pocket as being openable to remove the pad as desired. Greenberg discloses a brassiere with a pocket 60 with a pad 62 therein which is removable as desired. Such pockets with removable pads are well known in order to place pads therein as desired. Accordingly it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to modify the pocket and padding construction of Alfandre with the teaching of Greenberg to construct the pocket which encases the padding as an openable pocket in order to selectively remove and replace the padding therein as desired. (See Greenberg, col. 2, lines 60-66 and figures 1-3).

***Claim Rejections - 35 USC § 103***

Claims 24 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre.

Alfandre discloses the invention substantially as claimed. However, the Alfandre pocket enclosure only includes one cushioning layer. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the padding material of multiple layers or inserts in order to increase the cushioning level of the padded area since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 17 is rejected under 35 USC 103(a) as being unpatentable over Klass(US5,157,789).

Alfandre discloses the fastener cushion pouch as claimed. However, Alfandre does not specifically disclose the pouch as having a releasably fastened opening. Klass discloses a pad/cushion pouch that includes a releasable fastener. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was

made to modify the pouch of Alfandre to include a releasable fastener as disclosed by Klass in order to remove, replace or add padding material to the pouch as desired for more cushioning and comfort to the wearer.

Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the cited references, alone or in combination disclose the removable pouch as claimed in claim 35.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose brassieres with cushion structures therein.

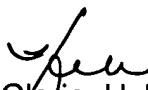
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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